



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2021-0669; FRL-9116-02-OAR]

Phasedown of Hydrofluorocarbons: Notice of 2022 Set-Aside Pool Allowance Allocations for Production and Consumption of Regulated Substances under the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that on March 31, 2022, the Agency issued hydrofluorocarbon allowances to applicants that met the applicable criteria from the set-aside pool established in EPA's 2021 final rule titled *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act*. In accordance with this final rule, the Agency redistributed allowances remaining in the set-aside pool to entities that received general pool production and consumption allowances on October 1, 2021. Both the set-aside allocation and the general pool reallocation were announced on the Agency's website on March 31, 2022, and entities were notified either by letter or electronic mail of the allocation decisions. The Agency also provided notice to certain companies on March 31, 2022, that the Agency intends to retire an identified set of those companies' allowances in accordance with the administrative consequences provisions established in the final rule.

FOR FURTHER INFORMATION CONTACT: Andy Chang, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202-564-6658; email address: chang.andy@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION: In EPA's rulemaking titled *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the*

American Innovation and Manufacturing Act (86 FR 55116, Oct. 5, 2021), EPA established a set-aside pool of allowances and codified at 40 CFR 84.15 criteria related to eligibility for the set-aside pool allowances, and how EPA would determine the level of allowances to allocate to each eligible entity. On March 31, 2022, EPA issued allowance allocations consistent with this section and posted the updated list of allowance holders on its website at <https://www.epa.gov/climate-hfcs-reduction>. The set-aside pool was established for three general categories of applicants: application-specific end users (40 CFR 84.15(b)(1)), entities that imported regulated substances¹ in 2020 that were not required to report under 40 CFR part 98 (i.e., the Greenhouse Gas Reporting Program (GHGRP)) and were not issued allowances as of October 1, 2021 (40 CFR 84.15(c)(1)), and new market entrants (40 CFR 84.15 (c)(2)).

Under 40 CFR 84.15, application-specific allowances from the set-aside pool are subject to the same conditions for such allowances in 40 CFR 84.13. These allowances are drawn from both the production and consumption set-aside allowance pools, and EPA is issuing application-specific allowances from the set-aside pool to applicants that qualify as end users in the applications established by the American Innovation and Manufacturing (AIM) Act. The following applications were eligible for application-specific allowances under the set-aside pool: propellants in metered dose inhalers (MDI), defense sprays, structural composite preformed polyurethane foam for marine use and trailer use, etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector, and onboard aerospace fire suppression.

Consistent with the provisions in 40 CFR 84.15, EPA has allocated set-aside pool application-specific allowances to the entities listed in Table 1.

Table 1. Set-aside Application-specific Allowances for Calendar Year 2022

¹ *Regulated substance* means a hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3). The list of regulated substances is available at Appendix A to 40 CFR part 84.

Applicant	Application	Number of Application-specific Allowances Issued (MTEVe)
Armstrong Pharmaceuticals	Metered Dose Inhalers	111,059.3
AstraZeneca Pharmaceuticals	Metered Dose Inhalers	2,122.7
Aurobindo Pharma USA	Metered Dose Inhalers	71,177.4
Invagen Pharmaceuticals	Metered Dose Inhalers	28,121.3
Odin Pharmaceuticals	Metered Dose Inhalers	9,473.8
Wabash National Corporation	Structural Composite Foam	36,686.6
IBM Corporation	Semiconductors	1,440.0
NXP Semiconductor	Semiconductors	5,040.8
The Research Foundation for The State University of New York OBO SUNY Polytechnic Institute	Semiconductors	1,245.4
SkyWater Technology	Semiconductors	15,689.3
Skyworks Solutions	Semiconductors	6,978.5
Proteng Distribution	Onboard aerospace fire suppression	12,075.0
Total		301,110.1

EPA received three applications by the deadline of December 6, 2021, for allowances under the second set-aside category. Under the provisions at 40 CFR 84.15(c)(1), in order to be eligible for this category an applicant had to:

- (1) import regulated substances in 2020;
- (2) not be required to report under 40 CFR part 98 (i.e., the GHGRP); and
- (3) not receive allowances from EPA on October 1, 2021.

All three applicants, MEK Chemical Corporation, Siemens Industry, and Wegochem International, were denied allowances because they are ineligible under 40 CFR 84.15(c)(1). The entities were required to report to the GHGRP under 40 CFR part 98.

Under the third set-aside category, for new market entrants, 45 entities submitted applications by the deadline of December 6, 2021. EPA is denying applications from seven entities, CAILLECH LLC, ChemPenn, LLC, ComStar International Inc., ISOSTU LLC, J&J AC Supply Inc, Kim Stilwell, and Peter Williams DBA New Era Group, because they are ineligible under 40 CFR 84.15(c)(2). The applicants were ineligible for at least one of the following reasons:

- (1) did not submit complete applications,
- (2) were not newly importing regulated substances, or
- (3) shared corporate or common ownership, corporate affiliation in the past five years, or familial relations with entities receiving allowances on October 1, 2021.

Consistent with the provisions in 40 CFR 84.15, EPA has allocated allowances for new market entrants to the entities listed in Table 2.

Table 2. Set-aside New Market Entrant Allowances for Calendar Year 2022

Applicant Name	Number of Consumption Allowances Issued (MTEVe)
Ability Refrigerants	200,000.0
A.C.S. Reclamation & Recovery (Absolute Chiller Services)	200,000.0
ACT Commodities	77.8
Advance Auto Parts	190,699.1
AFK & Co.	193,335.9
AFS Cooling	200,000.0
AllCool Refrigerant Reclaim	200,000.0
American Air Components	200,000.0
Automart Distributors DBA Refrigerant Plus	200,000.0
CC Packaging	194,000.0
Certified Refrigerant Services	200,000.0
Chemp Technology	200,000.0
Creative Solution	200,000.0
Cross World Group	200,000.0
EDX Industry	200,000.0
Fireside Holdings DBA American Refrigerants	199,978.5
Freskoa USA	200,000.0
Golden Refrigerant	200,000.0
Hungry Bear	200,000.0
Kidde-Fenwal	200,000.0
Lina Trade	200,000.0
Meraki Group	200,000.0
Metalcraft	161,000.0
North American Refrigerants	200,000.0
O23 Energy Plus	200,000.0
Perfect Score Too DBA Perfect Cycle	37,876.0
Reclamation Technologies	200,000.0
RTR Suppliers	198,000.0
Saalok	200,000.0
Sciarra Laboratories	8,700.0
SDS Refrigerant Services	200,000.0

Summit Refrigerants	200,000.0
SynAgile Corporation	1,125.1
TradeQuim	200,000.0
Tyco Fire Products	200,000.0
USA United Suppliers of America DBA USA Refrigerants	200,000.0
USSC Acquisition Corp	131,451.0
Wesco HMB	200,000.0
Total	6,716,243.4

EPA notes the restrictions in 40 CFR 84.15(e)(3) that new market entrants are allocated up to 0.2 MMTEVe (200,000 MTEVe) for calendar year 2022. Accordingly, entities that requested more than 200,000 MTEVe as a new market were allocated the regulatory maximum of 200,000 MTEVe. And, in accordance with 40 CFR 84.15(f)(1) set-aside allowances allocated to new market entrants cannot be transferred.

After making the allocations noted in Tables 1 and 2, there were 2,198,889.9 production allowances and 482,646.5 consumption allowances remaining in the set-aside pool. In accordance with 40 CFR 84.15(e)(4), those allowances have been distributed to the October 1, 2021, general pool allowance holders on a pro rata basis. EPA has made this pro rata distribution as shown in Tables 3 and 4.

Table 3. Set-aside Production Allowances Distributed Pursuant to 40 CFR 84.15(e)(4)

Entity	Number of Production Allowances Issued (MTEVe)
Arkema	265,221.2
Chemours	491,227.0
Honeywell International	1,114,441.9
Iofina Chemical	11.4
Mexichem Fluor DBA Koura	327,988.4

Table 4. Set-aside Consumption Allowances Distributed Pursuant to 40 CFR 84.15(e)(4)

Entity	Number of Consumption Allowances Issued (MTEVe)¹
A-Gas	5,926.5
Advanced Specialty Gases	526.9
Air Liquide USA	920.6
Altair Partners	5,390.0

Arkema	57,387.2
Artsen	1,897.6
AutoZone Parts	4,592.1
AW Product Sales & Marketing	359.2
Bluon	61.8
Chemours	61,647.9
Combs Gas	2,378.4
ComStar International	690.8
Daikin America	5,763.4
Electronic Fluorocarbons	192.6
First Continental International	1,421.7
FluoroFusion Specialty Chemicals	4,713.8
GlaxoSmithKline	990.5
Harp USA	1,413.8
Honeywell International	152,348.3
Hudson Technologies	5,518.1
ICool USA	6,291.7
IGas Holdings	47,912.0
Iofina Chemical	2.3
Lenz Sales & Distribution	2,050.4
Linde	983.4
Mexichem Fluor DBA Koura	47,053.8
Mondy Global	588.6
National Refrigerants	36,577.3
Nature Gas Import and Export	1,513.6
Refrigerants, Inc.	49.0
RMS of Georgia	2,994.0
Showa Chemicals of America	135.7
Solvay Fluorides	2,035.9
Technical Chemical	1,798.9
Transocean Offshore Deepwater Drilling	0.0
Tulstar Products	1,355.7
Walmart	4,211.6
Waysmos USA	1,171.7
Weitron	11,705.0
Wilhelmsen Ships Service	74.6

¹ Numbers may not sum due to rounding.

This allocation of set-aside allowances should not be construed to limit the ability of EPA to apply administrative consequences under 40 CFR 84.35, or to limit the ability of the United States to exercise any authority to pursue enforcement action under the AIM Act and 40 CFR part 84, or under other federal laws or regulations.

For example, if future information reveals an entity provided false, inaccurate, or misleading information or did not disclose financial or familial relationships between a new

entrant and another allowance holder, EPA may pursue administrative consequences and refer the entity for any and all appropriate enforcement actions.

On March 31, 2022, EPA also provided notice to three entities of the Agency's intent to take administrative consequences in accordance with 40 CFR 84.35 and retire an identified set of those companies' allowances. Using this authority, EPA can retire, revoke, or withhold the allocation of allowances, or ban a company from receiving, transferring, or conferring allowances.

Judicial Review

The AIM Act provides that certain sections of the Clean Air Act (CAA) "shall apply to" the AIM Act and "any rule, rulemaking, or regulation promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA]." *Id.* § 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, *id.* § 7607, which includes provisions on judicial review. Section 307(b)(1) provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, but "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

This final action is "nationally applicable" within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of "nationwide

scope or effect” within the meaning of CAA section 307(b)(1).² This final action consisted of the Agency issuing hydrofluorocarbon allowances to applicants that met the applicable criteria from the set-aside pool and redistributing allowances remaining in the set-aside pool to entities that received general pool production and consumption allowances on October 1, 2021. The applicants and entities are located throughout the country in varying judicial circuits.³ This final action is based on a common core of factual findings concerning the eligibility of applicants to the set-aside pool. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the Federal Register.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the Federal Register. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such rule or action.

Hans Christopher Grundler,

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Office of Atmospheric Programs.

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² In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

³ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.